

Furloughs Likely If Surface Transportation Appropriations and Authorizations Lapse on September 30

September 7, 2021

At midnight September 30, 2021, the law authorizing federal surface transportation programs, the Fixing America's Surface Transportation Act (FAST Act; P.L. 114-94), as extended, as well as the annual transportation appropriations provided in the Continuing Appropriations Act, 2021, and Other Extensions Act (P.L. 116-159), are set to expire. The House is considering the Senate-passed Infrastructure Investment and Jobs Act (H.R. 3684), which would reauthorize surface transportation programs. The current state of the FY2022 appropriations process raises the prospect that Congress will consider a continuing resolution that would extend appropriations at current levels beyond September 30. Not reauthorizing surface transportation programs or an appropriations lapse could lead to shutdowns and furloughs, with a simultaneous lapse in both authorizations and appropriations having the greatest impact.

How the two expirations would affect surface transportation programs depends on whether a program or activity is funded through the Highway Trust Fund (HTF) or with appropriated budget authority from the Treasury's general fund. The Anti-Deficiency Act (ADA; [31 U.S.C. §1341](#)) prohibits agencies from incurring obligations that are in advance of appropriations except in certain circumstances. This means that transportation programs and activities funded by general funds must be appropriated. In contrast, HTF funding is a form of budget authority that by law may be obligated prior to an appropriation, and is effectively an exception under the ADA. However, the authority to make payments from the HTF must be authorized, and that authorization expires September 30, 2021.

If the authorizations are not extended or replaced, all HTF-funded personnel not needed to fulfill excepted activities under the ADA (such as life, safety, and the protection of property), or funded with appropriations, would be furloughed. Approximately 3,500 to 4,000 employees in the five Department of Transportation (DOT) surface transportation agencies discussed below would be affected. Under a [lapse of annual appropriations](#), all appropriations-funded non-excepted programs and activities in the Department of Transportation would likely shut down. Roughly 900 to 1,000 non-excepted surface transportation program employees would likely be furloughed.

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IN11737

If neither a reauthorization bill nor an appropriations act or resolution is enacted by September 30, 2021, all surface transportation programs would shut down and all non-excepted employees would likely be furloughed. The total number of employees likely furloughed would be in the range of 4,400 to 5,000.

Federal Highway Administration (FHWA)

If the FAST Act expires, approximately 2,600 of FHWA's employees would be furloughed. Based on past experience, about 60 of its HTF-funded staff and roughly 70 non-HTF-funded staff would likely continue to work. All FHWA payments from the HTF to states and other grant recipients would cease. There would be no authority to obligate new funds or reimburse grantees for previously obligated projects under the Federal Aid Highway Program. Some states might continue federal-aid highway projects already under construction in expectation of future reimbursement, but without repayments from FHWA they might experience cash flow problems that would leave them unable to pay contractors. Construction directly overseen by FHWA (mostly projects on federal lands) would halt.

If authorizations are extended but annual appropriations lapse, FHWA's programs and activities would continue, there would be no furloughs, and the obligation of and payments from the highway account of the HTF would continue. If both authorizations and annual appropriations lapse, all but approximately 60 FHWA employees would likely be subject to furlough.

Federal Transit Administration (FTA)

If transit program authorizations were to expire, FTA would not furlough any of its roughly 560 employees, because the agency's administrative costs are currently paid through appropriations rather than with money from the HTF. However, FTA would not be able to reimburse transit agencies for new costs under its formula programs, which are HTF-funded. Payments for construction projects supported by the general-funded Capital Investment Grants (CIG) program could continue.

In the case of a lapse of annual appropriations but not authorizations, most of FTA's programs and activities would cease and all but about 75 of the agency's roughly 560 employees would likely be furloughed. A number of excepted employees would continue to make timely reimbursements for grants awarded with prior-year appropriations. HTF funding for the formula programs would exist, but no FTA grant administration employees likely would be allowed to work on new grants. The CIG Program would cease making new grants. Overall, the lack of an appropriation would mean that no new grants, cooperative agreements, contracts, or documents obligating funds could be executed.

If both authorizations and appropriations lapse, the impacts on FTA would be similar to those of a lapse in appropriations. The number of employees excepted from furlough would likely be roughly the same (75 of roughly 560 employees), but the employees who remain at work would have no new HTF or general fund money to administer.

Other DOT Surface Transportation Administrations

The operations of the Federal Motor Carrier Safety Administration (FMCSA) and the National Highway Traffic Safety Administration (NHTSA) would continue under an appropriations lapse; none of FMCSA's roughly 1,100 employees or NHTSA's roughly 600 employees would be furloughed because they are funded with HTF funds. However, if those agencies' activities are not reauthorized, almost all non-excepted employees would likely be furloughed; NHTSA might use appropriated funds to pay some employees. FMCSA and NHTSA have not released estimates of the number of excepted employees who would remain on the job in the absence of authorizations.

The Federal Railroad Administration (FRA) is entirely funded with appropriations. Consequently, a lapse in authorizations would have little effect as long as appropriated funds are available to FRA.

[According to DOT](#), the lack of an appropriation could lead to the furlough of 402 of FRA's 927 employees. The roughly 525 excepted employees would allow FRA to continue to manage rail accident/incident investigations and maintain an inspector presence to review and identify unsafe operations.

The National Railroad Passenger Corporation (Amtrak) is a wholly federally owned corporation and is not a federal agency. Although it is reliant on appropriated federal subsidies, it has other revenue sources, and its operations would not be immediately affected by an [appropriations lapse](#). Amtrak does not require an authorization to continue to operate.

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